

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Susan Hoy, et al.,

Plaintiffs

v.

Andera Hernandez, et al.,

Defendants

Case No. 2:20-cv-00103-CDS-MDC

**Order Granting Plaintiffs'  
Motion for Remand and Denying  
Motion to Seal**

[ECF Nos. 170, 171, 177]

This is a civil-rights action brought in the Eighth Judicial District Court by plaintiff Susan Hoy, guardian ad litem for J.M. and I.M., two minor children who suffered severe injuries while in the care of their former foster parents, defendants Andrea and Waldo Hernandez. Hoy brought this action against Clark County and various employees of the county's Division of Family Services (DFS) for their alleged failure to stop the Hernandezes abuse of J.M. and I.M. Compl., ECF No. 1-2. The Hernandezes are the only remaining defendants. Accordingly, Hoy now moves to remand this action back to state court because there are no federal claims against the Hernandezes. ECF No. 170. The Hernandezes oppose remand. ECF No. 173. Hoy asks this court to seal the Hernandezes' opposition. ECF No. 177. For the reasons set forth herein, I deny Hoy's motion to seal, decline to exercise supplemental jurisdiction over the plaintiffs' surviving state-law claims, and remand this matter to the Eighth Judicial District Court.

**I. Background**

With over 180 docket entries and having litigated this matter for over 4 years, the parties are familiar with the facts and background of this case so I only include background information relevant to resolving this matter.

Hoy's complaint asserts four claims: (1) civil rights violations brought under 42 U.S.C. § 1983 against Brochu, Kallas, Lisa Ruiz-Lee, Paula Hammack, and Clark County; 1 (2) inadequate

1 training brought under 42 U.S.C. § 1983 against Ruiz-Lee, Hammack, and Clark County; (3)  
 2 negligence against Brochu, Kallas, and Clark County; and (4) negligence against the  
 3 Hernandezes. Compl., ECF No. 1-2 at ¶¶ 52–82.

4 The negligence claims against Brochu, the federal 42 U.S.C. § 1983 claims and inadequate  
 5 training claims against Clark County, and all claims against Kallas, Ruiz-Lee, and Hammack are  
 6 dismissed. ECF No. 145. Further, the § 1983 claims against Brochu and the negligence claim  
 7 against Clark County are dismissed. ECF Nos. 181; 182. Defendants Anita Moody, Lisa Ruiz-Lee,  
 8 Paula Hammack, and Kim Kallas were all dismissed with prejudice. ECF No. 31 (Moody); Order,  
 9 ECF No. 145 (Ruiz-Lee, Hammack, Kallas). The Hernandezes are the only remaining defendants  
 10 and the only remaining claim against them is state-law negligence claim.

## 11 II. Motion to seal

12 Hoy seeks to seal the Hernandezes' response to the motion to remand because it contains  
 13 offers of judgment. ECF No. 177. Hoy argues that the filing of unaccepted offers of judgment is  
 14 "wholly improper." *Id.* at 3. The Hernandezes argue that they may cite an offer of judgment in a  
 15 pleading, especially when arguing the value of a plaintiff's claims and whether said claim  
 16 satisfies the jurisdictional requirements. ECF No. 178 at 4.

17 Historically, courts have recognized a "general right to inspect and copy public records  
 18 and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435  
 19 U.S. 589, 597 n.7 (1978). The party seeking to seal a document attached to a non-dispositive  
 20 motion must meet the lower "good cause" standard pursuant to Rule 26(c). *Foltz v. State Farm*  
 21 *Mut. Auto Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (discussing *Phillips v. General Motors Corp.*, 307  
 22 F.3d 1206 (9th Cir. 2002).

23 As a matter of law, Rule 68(a) does not permit a plaintiff to make an offer of judgment on  
 24 a defendant. It provides that "a party defending against a claim may serve on an opposing party  
 25 an offer to allow judgment on specified terms." Fed. R. Civ. P. 68(a). Further, Rule 68(b)  
 26 provides that evidence of an unaccepted offer of judgment is not admissible except in a

1 proceeding to determine costs. Fed. R. Civ. Proc. 68(b). Since this is not a proceeding to  
2 determine costs, the unaccepted offer of judgment is inadmissible, and the court has not  
3 considered it. Nonetheless, an offer of judgment is not privileged information that is sealable,  
4 and Hoy does not establish good cause to seal this information. As a result, Hoy's motion to seal  
5 is denied.

### 6 **III. Motion to remand**

7 "Federal courts are courts of limited jurisdiction, possessing 'only that power authorized  
8 by Constitution and statute.'" See U.S. Const. art. III, § 2, cl. 1; *Gunn v. Minton*, 568 U.S. 251, 256  
9 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Subject to certain  
10 requirements and limitations, a defendant generally may remove a case from state court to a  
11 federal court with subject matter jurisdiction over the action. 28 U.S.C. § 1441(a)–(c). Subject  
12 matter jurisdiction exists where either: (1) a federal question arises on the face of the complaint  
13 or (2) if there is diversity jurisdiction. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).  
14 Diversity jurisdiction requires: (1) all plaintiffs be of different citizenship than all defendants,  
15 and (2) the amount in controversy to exceed \$75,000. See 28 U.S.C. § 1332(a).

16 Once an action is removed to federal court, a plaintiff may challenge removal by filing a  
17 motion to remand. 28 U.S.C. § 1447(c). Remand is appropriate if, at any time before final  
18 judgment, it appears that the court lacks subject matter jurisdiction over the action. *Id.* In order  
19 to protect the jurisdiction of state courts, the removal statute should be construed narrowly,  
20 against removal jurisdiction and in favor of remand. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100,  
21 108–09 (1941).

22 Here, Hoy argues that this action should return to state court because there is no  
23 diversity of citizenship and because the federal claims were dismissed on summary judgment.  
24 ECF No. 170 at 4. The Hernandezes contend that diversity jurisdiction exists because they reside  
25 in El Salvador. ECF No. 173 at 3.

1 As a threshold matter, the core principle of federal removal jurisdiction on the basis of  
2 diversity is determined—and must exist—as of the time the complaint is filed and removal is  
3 effected. See *Morongo Band of Mission Indians v. California State Bd. Of Equalization*, 858 F.2d 1376, 1380  
4 (9th Cir. 1988) (diversity is determined by citizenship of parties as of filing of the original  
5 complaint); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998) (diversity must exist  
6 when action is removed). Here, diversity among all the parties did not exist at the time the  
7 complaint was filed or when removal was effected. See ECF No. 1-2 at 3–5. That means diversity  
8 jurisdiction cannot be exercised and the only basis for jurisdiction here is federal question. Thus,  
9 the Hernandezes’ argument that this court should decline to remand based on diversity  
10 jurisdiction fails.

11 As courts of limited jurisdiction, federal courts may only exercise supplemental  
12 jurisdiction over state-law claims that “are so related to claims in the action” that they form the  
13 same case or controversy with the claims over which the court has jurisdiction. 28 U.S.C. §  
14 1367(a). Once a plaintiff’s federal claims are gone, the court may decline to exercise supplemental  
15 jurisdiction over remaining state-law claims. *Id.* at § 1367(c)(3). The exercise of supplemental  
16 jurisdiction is entirely within the court’s discretion. *United Mine Workers of America v. Gibbs*, 383  
17 U.S. 715, 716 (1966). Here, because the only remaining claim against the Hernandezes is a state-  
18 law negligence claim, I decline to exercise supplemental jurisdiction over. See *City of Colton v. Am.*  
19 *Promotional Events, Inc.-W.*, 614 F.3d 998, 1008 (9th Cir. 2010) (holding that district court acted  
20 within its discretion in declining to exercise supplemental jurisdiction after granting summary  
21 judgment on all federal claims)); see also *Cadeaux v. Las Vegas Metro. Police Dep’t*, 646 F. Supp. 3d  
22 1312, 1328 (D. Nev. 2022) (declining to exercise supplemental jurisdiction over remaining state-  
23 law claim for negligence).

1 IV. Conclusion

2 IT IS THEREFORE ORDERED that plaintiffs' motion to seal [ECF No. 177] is DENIED.

3 IT IS FURTHER ORDERED that plaintiffs' motion to remand [ECF No. 170] is  
4 GRANTED.

5 IT IS FURTHER ORDERED that the proposed joint pretrial order [ECF No. 171] is  
6 DENIED as moot.

7 The Clerk of Court is kindly directed to remand this action to the Eighth Judicial  
8 District Court, Department 28, Case No. A-19-806825-C.

9 Dated: April 15, 2024

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12 Cristina D. Silva  
13 United States District Judge  
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